

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

RONALD QUALLS	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 05-10888-NMG
	)	
LOIS RUSSO,	)	
	)	
Respondent.	)	
	)	

**MEMORANDUM IN OPPOSITION TO  
PETITION FOR WRIT OF HABEAS CORPUS**

The respondent hereby submits this memorandum in opposition to the petition for writ of habeas corpus filed by Ronald Qualls (“the petitioner”). In his habeas petition, the petitioner claims that the admission at trial of testimony regarding the murder victim’s statements to the petitioner was a denial of the petitioner’s Sixth Amendment right of confrontation, as outlined in the recent Supreme Court case of *Crawford v. Washington*, 124 S.Ct. 1354 (2004).

The petitioner’s claim must be denied, however, because the petitioner has failed to present his argument regarding the *Crawford* case to the Massachusetts Supreme Judicial Court, and has therefore failed to exhaust his remedies in state court, as he must do before bringing his claim in federal court. The habeas petition must also be denied because the trial court’s decision to admit the testimony was a ruling of state law, and errors of state law, as opposed to constitutional questions, cannot form the basis for a habeas corpus claim. Moreover, even if this Court were to examine the merits of the petitioner’s Sixth Amendment claim, the claim would still fail because the petitioner’s Confrontation Clause rights were not violated: the testimony

which the petitioner challenges was not hearsay, because it was not admitted for its truth, but rather for an alternate purpose. Accordingly, the concerns addressed by the Supreme Court in *Crawford* are not present in the instant case. Finally, the petition must be dismissed because any violation of the petitioner's Sixth Amendment rights which did occur can only be seen as a harmless error when viewed in light of the trial proceedings as a whole.

### STATEMENT OF THE CASE

On November 10, 1992, a Suffolk County grand jury returned indictments against the petitioner, charging him with two counts of first degree murder (G.L. c. 265, § 1), assault and battery by means of a dangerous weapon (G.L. c. 265, § 15A(b)), assault by means of a dangerous weapon (G.L. c. 265, § 15B(b)), and unlawful possession of a firearm (G.L. c. 269, § 10(a)). *See* Docket Sheet for the Suffolk Superior Court Criminal case Docket Number SUCR1992-11850, attached hereto as Exhibit 1 (hereinafter, "Docket Sheet"), pp. 12-13.

After a jury trial which was held from October 25 to November 3, 1993, the petitioner was convicted on all counts on which he was charged. *See* Docket Sheet, Ex. 1, pp. 5-6. On June 6, 1997, the Massachusetts Supreme Judicial Court ("the SJC") reversed the petitioner's convictions. *See Commonwealth v. Qualls*, 425 Mass. 163 (1997).

The petitioner was tried on the same charges before a second jury from March 23 to March 31, 1998. *See* Docket Sheet, Ex. 1, pp. 10-11. On March 31, 1998, the jury returned guilty verdicts on all counts with which the petitioner was charged. *Id.*, p. 11.

On that same day, the petitioner was sentenced to two consecutive life terms for first degree murder, and was sentenced to terms of 9 to 10 years for the conviction of assault and battery by means of a dangerous weapon and 3 to 5 years for the conviction of unlawful

possession of a firearm, both of which were to run concurrently with his life sentences. Docket Sheet, Ex. 1, p. 11. The petitioner's conviction for assault by means of a dangerous weapon was placed on file with the petitioner's consent. *Id.*

The petitioner filed a timely notice of appeal on April 10, 1998, and his appeal was docketed in the SJC on August 5, 1999. *See* Docket Sheet, Ex. 1, p. 11; *see also* Brief and Argument for the Commonwealth, *Commonwealth v. Qualls*, SJC Docket No. SJC-08088, filed with the petitioner's supplemental materials as Exhibit B, p. 6. The SJC affirmed the petitioner's convictions on December 15, 2003. *See Commonwealth v. Qualls*, 440 Mass. 576 (2003).

On July 20, 2004, the petitioner filed a motion for, *inter alia*, a new trial in the Superior Court. *See* Docket Sheet, Ex. 1, p. 12. The motion was denied on September 7, 2004. *Id.*

The petitioner filed the instant petition for a writ of habeas corpus on April 29, 2005.

### **STATEMENT OF FACTS**

The SJC's recitation of facts is entitled to a presumption of correctness under 28 U.S.C. § 2254(e)(1). *See Coombs v. Maine*, 202 F.3d 14, 18 (1st Cir. 2000); *Avellar v. DuBois*, 30 F.Supp.2d 76, 79 (D.Mass. 1998); *Otsuki v. DuBois*, 994 F.Supp. 48, 51 & n.3 (D.Mass. 1998); *cf. Sumner v. Mata*, 449 U.S. 539, 545-46 (1981)(holding that the presumption of correctness under former habeas statute applied to "factual determinations made by state courts, whether the court be a trial court or appellate court"). This deference extends to inferences drawn by the state court from those factual determinations as well. *See Parke v. Raley*, 506 U.S. 20, 35 (1992); *Flores v. Marshall*, 53 F.Supp.2d 509, 514 (D.Mass. 1999).

The SJC's recitation of the facts of the instant case was as follows:

The jury could have found the following facts. On the evening of October 2, 1992, Leroyal Holmes, Fred Monroe, and the victims, Ronald Price, known as

"Dallas," and his brother, Roosevelt Price, known as "Tony," got together at the Biarritz bar in the Roxbury section of Boston. There, Dallas saw the [petitioner]<sup>1</sup> and told him that he had heard that the [petitioner] had been looking for him. The [petitioner] said that he did not know who Dallas was. Dallas replied that he was the person who had stabbed the [petitioner's] cousin. A fist fight between the two ensued. During the fight, Tony became involved, grabbed the [petitioner], and placed him in a headlock. An off-duty police detective and a bouncer at the bar broke up the fight, and the detective escorted the [petitioner] outside.

Back inside the bar, Dallas approached the [petitioner's] companion, James Earl "Junior" Williams,<sup>2</sup> and asked him why he was on the [petitioner's] side. Dallas protested that Williams was "supposed to be" his cousin. Williams said that he was "down" with the [petitioner] because the [petitioner] put his "life on the line" for Williams.

Moments later, outside the bar, the [petitioner] got into a fight with Tony. During the fight, the [petitioner] pulled out a knife and swung it at Tony. The [petitioner] then got into the front passenger seat of Williams's automobile, a dark-colored Ford Escort, and the two drove off.

Tony, Dallas, Holmes, and Monroe went to another bar. They encountered Donna Carrington and Mattie Buford, Monroe's girl friend, in the bar's parking lot. The men told the women to park Carrington's Geo Tracker, a two-door vehicle, in the lot while they went into the bar. After being denied admission because the bar was closing, the men returned to the parking lot, where Tony told the group that he did not feel well.

The group discovered that Tony had been stabbed near and beneath his right armpit. Tony and Dallas got into the back seat of Carrington's vehicle so that she could drive Tony to a nearby hospital. Tony sat in the back seat behind Carrington, and Dallas sat in the right rear passenger seat next to Tony.

As Tony and Dallas were getting into the vehicle, Dallas observed Williams's automobile drive by. Monroe saw that Williams was the driver and that the [petitioner] was a passenger. Concerned, Holmes walked over to where Williams's automobile was headed and the [petitioner] "popped up" in front of

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<sup>1</sup> The SJC noted that "[t]he [petitioner] was five feet, nine inches tall, and weighed 140 pounds." *Commonwealth v. Qualls*, 440 Mass. 576, 578 n.2 (2003).

<sup>2</sup> The SJC observed that "Williams was five feet, nine inches tall, weighed 210 pounds, and was darker skinned than the [petitioner]." *Commonwealth v. Qualls*, 440 Mass. at 578 n.3.

him. Holmes grabbed the [petitioner] and told him to "let it go." The [petitioner] pulled out a .38 caliber revolver and pointed it at Holmes, stating that he would blow Holmes's head off if he did not get out of the way. As the [petitioner] approached Carrington's vehicle, Holmes shouted that the [petitioner] was "strapped," meaning that he was armed.

Hearing Holmes's warning, Buford ran across the street. Monroe ran to the corner of the parking lot. The [petitioner] approached the rear of Carrington's vehicle and fired multiple shots into the plastic covering in the back of the vehicle, then, from the front passenger side of the vehicle, through the open window, fired more shots into the back seat. The [petitioner] then fled on foot, running past Buford.

Monroe ran to Carrington's vehicle and jumped in. Carrington drove to Tony's apartment. Tony went into the apartment. Dallas was slumped over in the back seat, blood running out of his mouth. Holmes, who ran behind the vehicle as it drove off, got into the passenger seat and told Monroe to get inside the vehicle and drive Dallas to a hospital. Dallas died within minutes of his arrival.

Police and emergency medical workers went to Tony's apartment. Tony approached the police and told them that Junior Williams had shot him, adding that Junior drove a black or blue Ford Escort. He also gave them Junior's address, and told them that Junior had a sister who lived on Ruggles Street. He stated that two males had been in the Ford Escort when it drove by. Tony was transported to a hospital, where he subsequently died.

Shortly after 4 A.M., October 3, 1992, the police stopped Williams's Ford Escort. During the stop, Williams pointed at Holmes, who happened to be walking by. Earlier, Holmes had fled the hospital because he did not want anyone questioning him. The police brought both men in for questioning separately. Williams was wearing a gray sweatshirt.

At the police station, Holmes identified the [petitioner] as the shooter from a photographic array. He stated that the [petitioner] had been wearing a blue "Members Only" jacket. Monroe initially gave the police false identification information because he did not want to get involved. However, he later identified the [petitioner] as the shooter from a photographic array. Monroe told police that the [petitioner] had been wearing a dark-colored hooded sweatshirt.

Approximately one week after the shootings, Buford identified the [petitioner] as the man she saw approach Carrington's vehicle at the time of the shooting. Buford did not actually observe the [petitioner] shoot into, or at, Carrington's vehicle, but, after hearing the warning that the [petitioner] was "strapped," saw

the [petitioner] run through the parking lot over to the back of the Tracker. She heard gunshots and then saw the [petitioner] run away from the vehicle. The [petitioner] ran right past her.

Carrington was not able to identify the [petitioner] as the shooter. She described the shooter, however, as a black male, about eighteen or nineteen years of age; about five feet, seven inches tall; medium build; and wearing a dark blue Champion sweatshirt. She described the driver of the Ford Escort as darker skinned than the passenger, and identified Williams's Ford Escort as the automobile that drove by them prior to the shooting.

Both Dallas and Tony died of gunshot wounds to the chest. One of the shots fired at Dallas had been at close range. Of the three .38 caliber bullets recovered from their bodies, at least one from each body had been fired from the same weapon.

The gray sweatshirt that Williams had been wearing when he had been apprehended had several very small stains on the front and back which were later determined to be type B human blood. Williams, Dallas, and Tony had type B blood. The stains did not penetrate through the sweatshirt and were consistent with someone getting a paper cut and then wiping a hand on a shirt. There had been no blood on the back window of Carrington's vehicle, which suggested that blood had not passed through the window. A leather coat, such as the one Dallas had been wearing when he was shot, could prevent blood splatter or spurting from a gunshot wound.

The [petitioner] had type A blood. Type A blood was found on the front passenger seat of Williams's Ford Escort, and on the passenger door handle. The [petitioner's] fingerprint was found on the outside of the passenger door window.

The jury could also have found that the [petitioner] exhibited consciousness of guilt. In the spring of 1993, the [petitioner] telephoned Holmes and told him to tell Monroe and Buford that they had picked the wrong person. In March, 1998, Holmes encountered the [petitioner] in downtown Boston, after Holmes had met with the [petitioner's] attorney at the court house. The [petitioner] told Holmes that he knew where Holmes worked and lived, and also knew where Holmes's son's mother lived. The [petitioner] added that the court was trying to put him away for life and that he had nothing to lose. A couple of the [petitioner's] friends followed Holmes to the bus stop. Holmes took a taxi cab, and subsequently relocated.

The [petitioner] did not testify. His defense was that Williams was the shooter. He called two police officers to testify. The first officer testified that Dallas had had a confrontation with Williams at the Biarritz bar, and that Monroe initially

had told him that he did not know the identity of the shooter. The second officer confirmed that Tony had named Williams as the shooter.

*Commonwealth v. Qualls*, 440 Mass. at 578-581.

## ARGUMENT

### **I. The Petitioner's Claim is Barred Because He Did Not Present His Claim to the Massachusetts Supreme Judicial Court and Therefore His Claim Is Unexhausted.**

It is well established that “a federal court should not consider questions posed in a habeas petition until the ‘power of the highest state court in respect to such questions’ has been exhausted.” *Mele v. Fitchburg District Court*, 850 F.2d 817, 819 (1st Cir. 1988), *quoting United States ex rel. Kennedy v. Tyler*, 269 U.S. 13, 17 (1925). *See also Rose v. Lundy*, 455 U.S. 509, 518-19 (1982); *Adelson v. DiPaola*, 131 F.3d 259, 261-62 (1st Cir. 1997); *Dougan v. Ponte*, 727 F.2d 199, 202 (1st Cir. 1984); 28 U.S.C. § 2254(b)(1)(A). The longstanding exhaustion requirement<sup>3</sup>, in addition to ensuring that state courts have the first opportunity to correct their own constitutional errors made in their proceedings, enables federal courts to accord appropriate respect to the sovereignty of the states and promotes comity by “minimiz[ing] friction between our federal and state systems of justice.” *Rose*, 455 U.S. at 518. *See also Duncan v. Henry*, 513 U.S. 364, 365-66 (1995); *Ex parte Royall*, 117 U.S. 241, 251 (1886)(state and federal courts are “equally bound to guard and protect rights secured by the Constitution”); *Scarpa v. DuBois*, 38 F.3d 1, 6 (1st Cir. 1994), *cert. denied* 513 U.S. 1129 (1995); *Duckworth v. Serrano*, 454 U.S. 1, 3 (1984); *Mele*, 850 F.2d at 819.

It is the petitioner's heavy burden to demonstrate that his now-claimed federal errors

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<sup>3</sup> The exhaustion requirement is codified at 28 U.S.C. §§ 2254(b) and (c), which preclude federal habeas review unless “the applicant has exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). *See also Mele v. Fitchburg Dist. Ct.*, 850 F.2d 817, 819 (1st Cir. 1988).

were fairly presented to the state's highest court. *Nadworny v. Fair*, 872 F.2d 1093, 1098 (1st Cir. 1989). In order to present a claim sufficiently for exhaustion purposes, "a petitioner must inform the state court of *both* the factual and legal underpinnings of the claim." *Scarpa*, 38 F.3d at 6 (emphasis added). The theory that the petitioner advances in his habeas petition must be the same as that relied upon in state court. *Gagne v. Fair*, 835 F.2d 6, 7 (1st Cir. 1987). The exhaustion requirement is not met if there is an intervening change in federal law that casts the legal issue in a fundamentally different light. *Picard v. Connor*, 404 U.S. 270, 275-76 (1971); *Blair v. California*, 340 F.2d 741, 743-44 (9th Cir. 1965); *Pennsylvania ex rel. Raymond v. Rundle*, 339 F.2d 598, 598-99 (3d Cir. 1964).

Here, while the petitioner has raised a Confrontation Clause claim in the SJC, he has never approached the SJC with his argument concerning the alleged relevance of the *Crawford* decision to his claim. *See generally*, Exhibits B-E to the petitioner's supplemental materials. Accordingly, the petitioner has never provided the SJC with the opportunity to determine whether *Crawford* should be applied retroactively to the petitioner's conviction and, if so, whether under *Crawford's* holding the petitioner's Sixth Amendment rights have been violated. Since the petitioner has, therefore, failed to exhaust his state court remedies with respect to his claim, the claim should be dismissed. *See Rose*, 455 U.S. at 518-519; *Mele*, 850 F.2d at 819; *Blair*, 940 F.2d at 743-744.

## **II. The Petitioner's Claim Regarding the Admission of the Disputed Testimony Is a Question of State Law, and Thus Cannot Form the Basis for Federal Habeas Corpus Relief.**



The petitioner's habeas petition must be denied because the court's ruling on the question of whether Mr. Monroe's testimony was admissible for a purpose other than the truth of the matter asserted (and was not, therefore, hearsay) was a question of state law, and matters of state law cannot furnish the basis for federal habeas relief. *See Estelle v. McGuire*, 502 U.S. 62, 67-68, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991); *Lewis v. Jeffers*, 497 U.S. 764, 780, 110 S.Ct. 3092, 111 L.Ed.2d 606 (1990).

A. Standard to be Applied

Errors of state law do not provide a basis for federal habeas corpus relief. *Estelle*, 502 U.S. at 67-68; *Lewis*, 497 U.S. at 780. It is not the province of a federal habeas court to reexamine state court determinations of state law questions. *Lewis*, 497 U.S. at 780-81. In other words, this Court does not have jurisdiction in the federal collateral attack of the petitioner's state court conviction to review a claimed error of a State's evidentiary law. A federal court may issue a writ of habeas corpus only when a conviction violates the constitution, laws, or treaties of the United States. *Estelle*, 502 U.S. at 67-68; 28 U.S.C. §§ 2241, 2254. "Even if an error of state law could be sufficiently egregious to amount to a denial of equal protection or of due process of law guaranteed by the Fourteenth Amendment," a federal court may not issue a writ to redress such a deprivation if the claims are merely ancillary to perceived errors of state law. *Pulley v. Harris*, 465 U.S. 37, 41, 104 S.Ct. 871, 79 L.Ed.2d 29 (1984). *See also Adelson v. DiPaola*, 131 F.3d 259, 262 n.3 (1st Cir. 1997); *Hamm v. Latessa*, 72 F.3d 947 (1st Cir. 1995), *cert. denied*, 519 U.S. 947 (1996); *Pitts v. Lockhart*, 911 F.2d 109, 111-12 (8th Cir. 1990), *cert. denied*, 501 U.S. 1253 (1991)(petitioner's claims that he was deprived of due process and equal protection were not grounds for habeas relief where his conviction was obtained in contravention

of state law, no matter how “serious and fundamental the error” may have been).

B. The Instant Case

In this case, the petitioner argues that the state courts committed error in finding that Mr. Monroe’s statement that the victim had told the petitioner that he (the victim) had killed the petitioner’s cousin was properly admitted into evidence. *See* Petitioner’s Memorandum, pp. 8-10. The SJC has reviewed this claim and found that

At trial, Monroe testified, over objection, that, hours before being shot, Dallas told the [petitioner], “I am the one who stabbed your cousin.” The [petitioner] argues that this evidence was improperly admitted because there was no evidence that the person Dallas killed was, in fact, the [petitioner’s] cousin. The testimony was not prohibited hearsay because it was not admitted for its truth, but to show the [petitioner’s] state of mind and possible motive, *see Commonwealth v. Qualls*, 425 Mass. 163, 167, 680 N.E.2d 61 (1997). In addition to Monroe’s testimony that Dallas communicated the statement to the [petitioner], Monroe testified that, in response to Dallas’ statement, the [petitioner] became angry and started pacing, permitting an inference that the [petitioner] had heard Dallas’ statement. A limiting instruction as to the use of the testimony was not requested, *see Commonwealth v. Leonardi*, [413 Mass.] at 764, 604 N.E.2d 23, and its absence does not create a substantial likelihood of a miscarriage of justice.

*Commonwealth v. Qualls*, 440 Mass. at 585.

The petitioner argues that, despite the fact that the SJC found that the statement was properly admitted for a purpose other than its truth, the jury must have considered the statement “substantively.” *See* Petitioner’s Memorandum, p. 9. However, the question of whether the evidence was properly admitted under the Massachusetts Rules of Evidence is not the question before a federal habeas court. Rather, federal review is limited to the question of whether admitting the evidence violated the petitioner’s constitutional rights. *See Oliver v. Wood*, 96 F.3d 1106, 1108 (8th Cir. 1996)(“We will not re-examine whether evidence was properly admitted under state law . . . . Rather, we consider only the question whether [the petitioner’s]

conviction was obtained in violation of the United States Constitution); *Jennings v. Maynard*, 946 F.2d 1502, 1505 (10th Cir. 1991).

Here, the decision as to whether to admit Mr. Monroe's testimony about the victim's statement not for its truth but rather to "show the [petitioner's] state of mind and possible motive" was a question of state law purely within the discretion of trial judge. *See Commonwealth v. Qualls*, 440 Mass. 576, 585 (2003). The SJC's decision upholding the trial judge's evidentiary ruling rests on a determination that the trial judge had correctly applied Massachusetts law regarding hearsay to determine that the statement was not a hearsay statement. *See id.* Accordingly, the SJC's ruling shows that the trial court's decision to admit Mr. Monroe's testimony was a matter of state evidentiary law, not implicating the Constitution. Because the petitioner's challenge to the SJC's decision is, at heart, a challenge to the state court's evidentiary ruling, independent of any federal law question,<sup>4</sup> the petition should be denied. *See Salemm v. Ristaino*, 587 F.2d 81, 85 (1st Cir. 1978) ("[h]abeas relief is unavailable to persons solely on the basis of alleged errors in evidentiary rulings").

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<sup>4</sup> As is set forth in Section III, below, the petitioner's Sixth Amendment claim under *Crawford* is without merit because there was no hearsay evidence introduced against the petitioner.

**III. The Petitioner's Rights under the Confrontation Clause of the Sixth Amendment Were Not Violated by the Admission of the Testimony about the Victim's Statement to the Petitioner.**

- A. Because the Case upon Which the Petitioner Relies, *Crawford v. Washington*, Was Decided after the Conclusion of the Petitioner's Trial, the Holding of *Crawford* Does Not Apply to the Petitioner's Claims.

Although the petitioner argues that his conviction was unlawful under the holding of *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 1367-69, 158 L.Ed.2d (2004), the *Crawford* case has no bearing on the instant habeas petition. The *Crawford* case was decided after the SJC's decision, and thus its holding was not available to the SJC at the time the SJC made its ruling. The question, on habeas review, is whether a Massachusetts court considering the petitioner's claim at the time his conviction became final would have felt compelled by existing precedent to conclude that the rule of law which the petitioner seeks was required by the Constitution. *Goeke v. Branch*, 514 U.S. 115, 118 (1995)(citations omitted). If the rule which the petitioner seeks was "not *dictated* by precedent existing at the time the defendant's conviction became final," a petitioner may not rely on this rule of law in support of his habeas petition. See *Caspari v. Bohlen*, 510 U.S. 383, 390 (1994), quoting *Teague v. Lane*, 489 U.S. 288, 301 (1989)(plurality opinion)(emphasis in original). The petitioner's claim does not fall into either of the two exceptions carved out from the *Teague v. Lane* doctrine, since the rule in *Crawford* does not place "certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to prescribe," *Teague*, 489 U.S. at 307, nor does it create a "'watershed rule[] of criminal procedure' implicating fundamental fairness and accuracy of the criminal proceeding." *Saffle v. Parks*, 494 U.S. 484, 495 (1990), quoting *Teague*, 489 U.S. at 311-312. See also *Beard v. Banks*, 542 U.S. 406 (2004)(a rule which qualifies under the second

*Teague* exception “would be so central to an accurate determination of innocence or guilt [that it is] unlikely that many such components of basic due process have yet to emerge”; the Court noted that it had “yet to find a new rule that falls under the second *Teague* exception” and opined that such a rule would need to be of the significance of the case of *Gideon v. Wainwright*, 372 U.S. 335 (1965)(right to counsel)). Therefore, even if the *Crawford* case applied to the facts of the petitioner’s claim, the rule set forth in *Crawford* could not be applied to the instant habeas review, since the rule in *Crawford* was not dictated by existing Supreme Court precedent at the time the petitioner’s conviction became final.<sup>5</sup>

B. The Case upon Which the Petitioner Relies, *Crawford v. Washington*, Does Not Apply Retroactively to the Petitioner’s Trial.

The petitioner cannot assert a successful Confrontation Clause challenge to his conviction based on the holding of *Crawford v. Washington*, 124 S.Ct. 1534 (2004), because the *Crawford* case, decided after the petitioner’s conviction became final, does not apply retroactively.

Although *Crawford* announces a new rule of law, the rule does not effect a change which implicates “the fundamental fairness and accuracy of the criminal proceeding.” See *Murillo v. Frank*, 402 F.3d 786, 790-91 (7th Cir. 2005), quoting *O’Dell v. Netherland*, 521 U.S. 151, 157, 117 S.Ct. 1969 (1997). Every federal circuit court of appeal which has considered this question, save one (the Ninth Circuit), has found that *Crawford* does not apply retroactively. See *Murillo*, 402 F.3d at 789-91; *Dorothy v. Jones*, 398 F.3d 783, 788 (6th Cir. 2005); *Mungo v. Duncan*, 393

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<sup>5</sup> Moreover, as is discussed in Section IIIC, below, the holding in *Crawford* would not have affected the SJC’s decision on this case since *Crawford*’s holding governs hearsay evidence and the disputed evidence in this case was not hearsay. See *Commonwealth v. Qualls*, 440 Mass. at 585; see also Section II, *infra*.

F.3d 327 (2d. Cir. 2004), *cert. denied sub nom Mungo v. Greene*, 125 S.Ct. 1936 (2005); *Brown v. Uphoff*, 381 F.3d 1219, 1226-27 (10th Cir. 2004), *cert. denied sub nom Brown v. Lampert*, 125 S.Ct. 940 (2005); *Evans v. Luebbbers*, 371 F.3d 438, 444-45 (8th Cir. 2004), *cert. denied sub nom Evans v. Roper*, 125 S.Ct. 902 (2005). *Contra Bockting v. Bayer*, 399 F.3d 1010, 1024 (9th Cir. 2005). Accordingly, this Court should not apply the holding retroactively to the petitioner's conviction.

C. The Case upon Which the Petitioner Relies, *Crawford v. Washington*, Does Not Apply to the Petitioner's Case Because *Crawford* Discusses Hearsay Testimony, Which Was Not Present in the Petitioner's Case.

The Supreme Court has recently clarified, in *Crawford*, that the indicia of reliability necessary for the introduction of hearsay testimony at trial can only be obtained through actual confrontation of witnesses at trial. *Crawford*, 541 U.S. at 68, 124 S.Ct. at 1374. However, the holding in *Crawford* would not have affected the SJC's decision on this case because *Crawford* addressed the admission of hearsay evidence, while the disputed evidence in this case was not hearsay. *See Commonwealth v. Qualls*, 440 Mass. at 585.

The Confrontation Clause of the Sixth Amendment is concerned with the long-established right of an accused person to confront and cross-examine his accuser. *See Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004)(stating that the Sixth Amendment is concerned with a criminal defendant's "right . . . to be confronted with the witnesses against him"). The Supreme Court has recently held that "the Framers [of the Constitution] would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify and the defendant had a prior opportunity for cross-examination." *Id.*, 541 U.S. at 53-54, 124 S.Ct. at 1365.

However, in *Crawford*, the Supreme Court addressed the question of evidence which had been found to be hearsay, not subject to any exception other than its general “reliability.” *See Crawford*, 541 U.S. at 36, 124 S.Ct. at 1358. The *Crawford* decision does not address the admission of statements which are not offered for their truth, but rather for some other purpose such as to show state of mind or motive (as was true in the instant case). The *Crawford* case concerned itself wholly with testimonial hearsay. *See Crawford*, 541 U.S. at 53, 124 S.Ct. at 1365 (“even if the Sixth Amendment is not solely concerned with testimonial hearsay, that is its primary object”). *Crawford*’s focus on the question of what provides sufficient “reliability” of a statement’s truthfulness to allow the introduction of that statement into evidence makes no sense at all in the context of examining a statement which was not offered for its truth. *See generally, Crawford*, 541 U.S. 36, 124 S.Ct. 1354. Since the statement at issue in the petitioner’s appeal has been found by the SJC to have been introduced for a purpose other than the truth of the matter asserted, *Crawford* has no applicability to the petitioner’s claim, and the petition should be denied.

#### **IV. Even If Some Violation of the Petitioner’s Rights Did Occur, it Was a Harmless Error in the Context of the Entire Trial.**

Even if this Court were to find that the admission of the disputed testimony ran afoul of the petitioner’s Confrontation Clause rights, this Court is only empowered to grant the requested writ of habeas corpus “if it finds that the error was not harmless.” *See Hill v. Brigano*, 199 F.3d 833, 846 (6th Cir. 1999). In order to find that the admission of the evidence was not harmless, this Court must find that the trial court’s error, “considered in light of the record as a whole, ‘had [a] substantial and injurious effect or influence in determining the jury’s verdict.’” *Levasseur v. Pepe*, 70 F.3d 187, 193 (1st Cir. 1995), *citing Brecht v. Abrahamson*, 507 U.S. 619 (1993). In

determining whether a jury was impermissibly influenced by the admission of the disputed testimony, this Court must consider “(1) the extent to which the error permeated the proceeding; (2) the centrality of the issue affected by the error to the case as actually tried and (3) the relative strength of the properly admitted evidence of guilt.” *Levasseur*, 70 F.3d at 193, *citing Brecht*, 507 U.S. at 637-39.

In this case, there was a wealth of evidence that the petitioner was the person who shot the victim. As the SJC observed:

Two witnesses, Monroe and Holmes, positively identified the [petitioner] as the shooter. Buford identified the [petitioner] as the man who approached Carrington’s vehicle, and as the man she saw flee the area after hearing gunshots. Carrington’s description of the man who approached both the back and side of her vehicle, in some aspects, was consistent with a description of the [petitioner]. Buford’s and Carrington’s testimony furnished further proof that the [petitioner] was the shooter. *See Commonwealth v. Castro*, 438 Mass. 160, 165, 778 N.E.2d 900 (2002). The Commonwealth also introduced evidence from which the jury could have inferred that the [petitioner] displayed consciousness of guilt, including evidence that he told Holmes to tell Monroe and Buford that they had picked the wrong person, and evidence that he threatened Holmes. *See id.*

*Commonwealth v. Qualls*, 440 Mass. at 582. In addition, there was evidence that the petitioner was, shortly before the murders, involved in a fight with one of the murder victims (Tony, Dallas’ brother), in which the petitioner “pulled out a knife and swung it at Tony.” *Id.* at 579. Moreover, there was evidence that after Dallas’ statement, the petitioner “became angry and started pacing, permitting an inference that the petitioner had heard [and, presumably, been upset by] Dallas’ statement.” *Id.* at 585. In light of the substantial body of evidence tending to show the petitioner’s guilt, the admission of testimony about Dallas’ statement to the petitioner, which was not admitted for its truth, was clearly harmless and may not form the basis for habeas relief. *See Brecht*, 507 U.S. at 637-639; *Levasseur*, 70 F.3d at 193.



### **CONCLUSION**

For the foregoing reasons, the respondent respectfully requests that this Court deny the petition for a writ of habeas and dismiss the petitioner's complaint in its entirety.

Respectfully submitted,

THOMAS F. REILLY  
ATTORNEY GENERAL

/s/ Maura D. McLaughlin  
Maura D. McLaughlin (BBO # 634923)  
Assistant Attorney General  
Criminal Bureau  
One Ashburton Place  
Boston, Massachusetts 02108  
(617) 727-2200, ex. 2857

Dated: January 4, 2006

### **Certificate of Service**

I hereby certify that on January 4, 2006, I caused a true and accurate copy of the above document to be served via electronic filing and by first class mail, postage prepaid, upon Bradford Bailey, Esq., counsel for the petitioner, at Denner O'Malley, LLP, 4 Longfellow Place, 35th Floor, Boston, Massachusetts, 02114.

/s/ Maura D. McLaughlin  
Maura D. McLaughlin

**Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT  
Case Summary  
Criminal Docket**

## Commonwealth v Qualls, Ronald

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Details for Docket: SUCR1992-11850

### Case Information

<b>Docket Number:</b>	SUCR1992-11850	<b>Caption:</b>	Commonwealth v Qualls, Ronald
<b>Entry Date:</b>	11/10/1992	<b>Case Status:</b>	Criminal 2 Ctrm 806
<b>Status Date:</b>	01/25/2001	<b>Session:</b>	Disposed (appeal denied)
<b>Lead Case:</b>	NA	<b>Deadline Status:</b>	Deadline act
<b>Trial Deadline:</b>	11/18/1992	<b>Jury Trial:</b>	NO

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### Parties Involved

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4 Parties Involved in Docket: SUCR1992-11850

<b>Party Involved:</b>		<b>Role:</b>	Defendant
<b>Last Name:</b>	Qualls	<b>First Name:</b>	Ronald
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

<b>Party Involved:</b>		<b>Role:</b>	Plaintiff
<b>Last Name:</b>	Commonwealth	<b>First Name:</b>	
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

<b>Party Involved:</b>		<b>Role:</b>	Probation officer
<b>Last Name:</b>	Cremens	<b>First Name:</b>	John
<b>Address:</b>	Chief Probation Officer	<b>Address:</b>	Probation Department

**City:****State:****Zip Code:****Zip Ext:****Telephone:****Party  
Involved:****Role:** Witness**Last Name:** Williams**First Name:** James Earl**Address:** Suffolk County H.C. South Bay**Address:** 20 Branston Street**City:** Boston**State:** MA**Zip Code:****Zip Ext:****Telephone:**

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## Attorneys Involved

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6 Attorneys Involved for Docket: SUCR1992-11850

**Attorney  
Involved:****Firm Name:** MA02**Last Name:** Wechsler**First Name:** Pamela J**Address:** 1 Ashburton Place**Address:** Room 2019**City:** Boston**State:** MA**Zip Code:** 02108**Zip Ext:****Telephone:** 617-727-2200**Tel Ext:** 2827**Fascimile:** 617-727-3251**Representing:****Attorney  
Involved:****Firm Name:** MA130**Last Name:** Walker**First Name:** Nona E**Address:** 44 Bromfield Street**Address:** Suite 310-A**City:** Boston**State:** MA**Zip Code:** 02108**Zip Ext:****Telephone:** 617-482-6212**Tel Ext:****Fascimile:** 617-988-8495**Representing:** Qualls, Ronald (Defendant)**Attorney  
Involved:****Firm Name:****Last Name:** Sack**First Name:** Steven J**Address:** 14 Beacon Street**Address:** Suite 300**City:** Boston**State:** MA

<b>Zip Code:</b>	02108	<b>Zip Ext:</b>	
<b>Telephone:</b>	617-227-0123	<b>Tel Ext:</b>	
<b>Fascimile:</b>	617-227-7025	<b>Representing:</b>	Qualls, Ronald (Defendant)
<b>Attorney Involved:</b>		<b>Firm Name:</b>	PETE01
<b>Last Name:</b>	Moscardelli	<b>First Name:</b>	John M
<b>Address:</b>	8 Winter Street	<b>Address:</b>	12th floor
<b>City:</b>	Boston	<b>State:</b>	MA
<b>Zip Code:</b>	02108	<b>Zip Ext:</b>	
<b>Telephone:</b>	617-423-6222	<b>Tel Ext:</b>	
<b>Fascimile:</b>	617-423-6555	<b>Representing:</b>	Qualls, Ronald (Defendant)
<b>Attorney Involved:</b>		<b>Firm Name:</b>	MA112
<b>Last Name:</b>	Miller	<b>First Name:</b>	Rosalind
<b>Address:</b>	****JUSTICE****	<b>Address:</b>	510 Washington Street
<b>City:</b>	Dorchester	<b>State:</b>	MA
<b>Zip Code:</b>	02124	<b>Zip Ext:</b>	
<b>Telephone:</b>	617-288-9500	<b>Tel Ext:</b>	
<b>Fascimile:</b>	617-288-1212	<b>Representing:</b>	
<b>Attorney Involved:</b>		<b>Firm Name:</b>	MARI05
<b>Last Name:</b>	Hodge	<b>First Name:</b>	David M
<b>Address:</b>	121 State Street	<b>Address:</b>	Suite 100
<b>City:</b>	Springfield	<b>State:</b>	MA
<b>Zip Code:</b>	01103	<b>Zip Ext:</b>	
<b>Telephone:</b>	413-788-4555	<b>Tel Ext:</b>	
<b>Fascimile:</b>	413-733-0785	<b>Representing:</b>	Qualls, Ronald (Defendant)

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## Calendar Events

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14 Calendar Events for Docket: SUCR1992-11850

<b>No.</b>	<b>Event Date:</b>	<b>Event Time:</b>	<b>Calendar Event:</b>	<b>SES:</b>	<b>Event Status:</b>
1	12/04/1992	09:30	Conference: Pre-Trial	1	Event continues over multiple c
2	01/28/1993	09:30	Hearing: Motion	1	Event continues over multiple c
3	02/26/1993	09:30	Hearing: Motion	1	Event continues over multiple c

4	04/01/1993	09:30	Hearing: Misc Matters	1	Event held as scheduled
5	09/29/1993	09:00	Status: Review by Session	3	Event held as scheduled
6	11/03/1993	09:00	TRIAL: by jury	3	Event held as scheduled
7	11/04/1993	09:00	Hearing: Sentence Imposition	3	Event held as scheduled
8	07/31/1997	09:00	Bail: Review	3	Event held as scheduled
9	09/04/1997	09:00	Conference: Status Review	3	
10	10/08/1997	09:00	Conference: Status Review	3	Event held as scheduled
11	11/24/1997	09:00	Conference: Status Review	3	
12	01/06/1998	09:00	Conference: Status Review	3	Event canceled not re-schedule
13	01/06/1998	09:30	Conference: Status Review	1	Event held as scheduled
14	03/23/1998	09:00	TRIAL: by jury	2	Trial begins

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## Full Docket Entries

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346 Docket Entries for Docket: SUCR1992-11850

Entry Date:	Paper No:	Docket Entry:
11/10/1992	1	Indictment returned
11/10/1992		Notice & copy of indictment sent to Chief Justice & Atty Gen as to
11/10/1992		each homicide.
11/10/1992		Notice & copy of indictment & entry on docket sent to Sheriff as to
11/10/1992		each homicide.
11/10/1992	2	Motion by Commonwealth for arrest warrant to issue; filed & allowed
11/10/1992	2	(Constance M Sweeney, Justice)
11/10/1992		Warrant on indictment issued. (Hold warrant for R. Miller/W.Shea,
11/10/1992		ADA)
11/13/1992		Brought into Court on warrant.
11/13/1992		Order of notice with return of service thereon filed as to offenses
11/13/1992		#001 and #002.
11/13/1992		Deft arraigned before Court
11/13/1992		Indictment read as to offenses #001 and #002.
11/13/1992		RE offense #1: Plea of not guilty
11/13/1992		RE offense #2: Plea of not guilty
11/13/1992		Deft waives reading of indictment
11/13/1992		RE offense #3: Plea of not guilty
11/13/1992		RE offense #4: Plea of not guilty
11/13/1992		RE offense #5: Plea of not guilty
11/13/1992		Defendant committed to common jail on mittimus without bail without
11/13/1992		prejudice. Mittimus Issued. Wilson, AC/M - R. Miller, ADA - D.
11/13/1992		McLean, Court Reporter - J. Moscardella, Attorney.

12/04/1992		Defendant not in Court-All motions to be filed by 1/21/93.
12/04/1992	3	Pre-trial conference report, filed. Wilson, AC/M - R. Powers, ADA -
12/04/1992	3	D. McLean, Court Reporter - J. Moscardelli, attorney.
01/20/1993	4	Deft files:assented to motion for an extension of time to file Pre-
01/20/1993	4	trial motions.
01/28/1993		Defendant not in Court - motions to be filed by 2/19/93. Wilson, AC/M
01/28/1993		A. Miller, ADA - E.R.D. - J. Moscardelli, attorney.
02/19/1993	5	Deft files motion for discovery
06/24/1993		Brought into Court.
06/24/1993	6	Motion by Commonwealth: motion to take blood samples and affidavit in
06/24/1993	6	support of.
06/24/1993		Motion (P#6) allowed by agreement. Banks J. R. Miller ADA, M.
06/24/1993		Wrighton Court Reporter, J. Moscardelli Attorney.
07/12/1993		Brought into Court - oral motion to continue for trial by defendant
07/12/1993		allowed. Quinlan, J. - R. Miller, ADA - E. Cunio, Court Reporter - J.
07/12/1993		Moscardelli, Attorney.
10/25/1993		Brought into Court.
10/25/1993	7	Commonwealth files Motion for view
10/25/1993		Motion (P#7) allowed .
10/25/1993	8	Commonwealth files Motion in limine to mention evidence of motive in
10/25/1993	8	opening statement.
10/25/1993		Motion (P#8) allowed.
10/25/1993	9	Commonwealth files Motion in limine for ruling of statements
10/25/1993	9	reflective of victim's state of mind.
10/25/1993	10	Deft files Motion in limine
10/25/1993		Motion (P#10) denied.
10/25/1993		Commonwealth moves for trial on Offenses #001,#002,#003,#004 and
10/25/1993		#005. Court orders 15 jurors impanelled. Jury sworn. View taken.
10/26/1993		Brought into Court. Trial continues.
10/26/1993		Motion (P#9) allowed.
10/27/1993		Brought into Court. Trial continues.
10/28/1993		Brought into Court. Trial continues.
10/29/1993		Brought into Court. Jury present. Trial suspended until 11/01/93 Re:
10/29/1993		ADA Miller has larengitis.
11/01/1993		Brought into Court. Trial continues. Juror Della McLeod excused for
11/01/1993		caused after hearing. Trial continues with 14 jurors.
11/02/1993		Brought into Court. Trial continues. Commonwealth rests its case in
11/02/1993		chief. Defendant rests.
11/02/1993	12	Request for Jury Instructions filed and allowed in substance. See
11/02/1993	12	record
11/02/1993	11	Deft files Motion for required finding of not guilty.

11/02/1993		Motion (P#11) denied after hearing.s, Justice)
11/02/1993		Court orders jury reduced to twelve members and designates jurors
11/02/1993		Tina Catalfano and Susan Weiner as alternate jurors.
11/03/1993		Brought into Court. Jury commences deliberations. Jury question #1
11/03/1993		mark K for identifications.
11/03/1993		RE offense 1: Guilty verdict
11/03/1993	13	Verdict affirmed. Verdict slip filed.
11/03/1993		RE offense 2: Guilty verdict
11/03/1993	14	Verdict affirmed. Verdict slip filed.
11/03/1993		RE offense 3: Guilty verdict
11/03/1993	15	Verdict affirmed. Verdict slip filed.
11/03/1993		RE offense 4: Guilty verdict
11/03/1993	16	Verdict Affirmed. Verdict Slip filed.
11/03/1993		RE offense 5: Guilty verdict
11/03/1993	17	Verdict Affirmed. Verdict Slip filed.
11/03/1993		Commonwealth moves for sentencing.
11/03/1993		Bail set on 11/13/92 revoked and defendant order committed to Common
11/03/1993		Jail on a Mittimus without bail. Mittimus Issued.
11/04/1993		Brought into Court.
11/04/1993		Sentence credit given as per 279:33A: 371days.
11/04/1993		Sentence imposed: Re: Offense #001 MCI Cedar Junction for and during
11/04/1993		term of his natural life. Mittimus Issued.
11/04/1993		Sentence imposed: Re: Offense #004 MCI Cedar Junction Max 10 years -
11/04/1993		Min 9 years concurrent with sentence imposed on Offense #001.
11/04/1993		Mittimus Issued.
11/04/1993		Sentence imposed: Re: offense #005 MCI Cedar Juntion Max 5 years -
11/04/1993		Min 3 years concurrent with sentence imposed on Offense #001.
11/04/1993		Mittimus Issued.
11/04/1993		Sentence imposed: Re: offense #002 MCI Cedar Junction for and during
11/04/1993		term of natural life from and after sentence imposed on Offense #001.
11/04/1993		Mittimus Issued.
11/04/1993		Sentence credit given as per 279:33A: 0 Days
11/04/1993		Notified of right of appeal under rule 64 on case #004,#005.
11/04/1993		Notified of right of appeal under Rule 65
11/04/1993		Sentence imposed: Re: Offense #003 Court orders Offense place on file
11/04/1993		after a verdict guilty, defendant assenting thereto. Banks J - R.
11/04/1993		Miller ADA - M. Wrighton Court Reporter - J. Moscardelli Attorney.
11/05/1993	18	Deft files notice of appeal.
11/05/1993	19	Deft files motion for reduction of sentence.
11/05/1993	20	Deft files motion to withdraw.
11/05/1993	21	Deft files motion for required finding of not guilty. (Banks, J.

11/05/1993	21	notified with copies)
11/05/1993	21	Deft files appeal to appellate division. (Banks, RAJ - Irwi, CJ and
11/05/1993	21	J. Cremens, CPO each notified)
01/12/1994		Copy of notice of appeal mailed to Banks, J and R.Miller, ADA
01/12/1994		Court Reporter D.McLean is hereby notified to prepare one copy of the
01/12/1994		transcript of the evidence of November 13,1992 for arraignment before
01/12/1994		Wilson,AC/M.
01/12/1994	22	Court Reporter M.Wrighton is hereby notified to prepare one copy of
01/12/1994	22	the transcript of the evidence of October 25,26,27,28,29,November
01/12/1994	22	1,2,3,4,1993 for trial, verdict and disposition before Banks,J.
01/12/1994	22	Certificate of Clerk-filed.
01/13/1994		Victim-witness fee paid as assessed in the amount of \$50.00.
01/18/1994		Defendant not in Court.
01/18/1994		Motion (P#20 ) allowed.
01/18/1994		Committee for Public Counsel Services Appeals Division appointed.
01/18/1994		Wilson, AC/M - ERD.
02/01/1994	23	Deft files pro se: motion for a free trial transcript. Banks, RAJ
02/01/1994	23	notified with copy)
05/11/1994		Appeal dismissed - Appellate Division. Travers & McDaniel, JJ.
10/11/1994		Transcript received from D.McLean, Court Reporter.
01/24/1995		Transcript received from M.Wrighton,Court Reporter.
01/27/1995		Transcript received from M.Wrighton, Court Reporter.
01/30/1995		Transcript received from M.Wrighton, Court Reporter.
02/27/1995		Transcript received from M.Wrighton, Court Reporter.
02/28/1995		Transcript received from M.Wrighton, Court Reporter.
03/24/1995		Transcript received from M.Wrighton, Court Reporter.
04/21/1995		Notice sent to attorneys that transcripts are available.
04/24/1995	24	Certificate of delivery of transcript by Clerk, filed.
04/26/1995	25	Certificate of delivery of transcript by Clerk, filed.
04/28/1995		Notice of assembly of record; mailed to SJC Crt per Rule 9(d)
04/28/1995		Two certified copies of docket entries, original and copy of
04/28/1995		transcript, two copies of exhibit list and list of documents, copy of
04/28/1995		notice of appeal and indictments, each transmitted to Clerk of
04/28/1995		Appellate Court.(R. Miller, ADA - K. McMahon, ADA - N. Walker, Atty.
04/28/1995		for deft.)
08/16/1995		Probation supervision fee waived at request of probation officer.
08/16/1995		Delvecchio, J. - T. Goodman, Court Reporter.
07/15/1997	26	Rescript rec'd from the Supreme Judicial Court. The judgements are
07/15/1997	26	reversed, and the verdicts are set aside. The cases are remanded to
07/15/1997	26	the Superior Court for a new trial. (P. Wechsler, ADA and N. Walker,
07/15/1997	26	Atty each notified)



07/31/1997		Brought into Court.
07/31/1997	27	Commonwealth files Statement of the case.
07/31/1997		Motion by Commonwealth that defendant be admitted to bail orally made
07/31/1997		and allowed.
07/31/1997		Bail set: \$15,000 cash. Mittimus Issued, bail warning read. Special
07/31/1997		conditions of recognizance: Defendant is to report in person three
07/31/1997		times per week to probation department. Lauriat,J- P.Wechsler,
07/31/1997		ADA-T.Meany, Court Reporter-S.Sack, Attorney.
08/13/1997	28	Commonwealth files Motion for reconsideration of bail.
08/13/1997		Motion (P#28) denied after hearing. Lauriat,J-P.Wechsler, ADA-
08/13/1997		S.Garvin, Court Reporter-S.Sack, Attorney.
09/04/1997	29	Deft files motion for costs for an investigator.
09/04/1997		Motion (P#29 ) allowed.
09/04/1997	30	Deft files motion for criminal and juvenile records of Commonwealth.
09/04/1997		Motion (P#30 ) allowed. Volterra, J. - P. Weschler, ADA - D. McLean,
09/04/1997		Court Reporter - S. Sack, Attorney.
10/08/1997		Continued until 10/23/97 by agreement. RE: Status.
01/06/1998	31	Deft files Motion fo rcosts of service of summonses
01/06/1998		Motion (P#31) allowed. Donovan, J. - P. Weschler, ADA - D. Cullinan,
01/06/1998		Court Reporter - S. Sack, Atty.
02/19/1998		Defendant not in Court
02/19/1998	32	Commonwealth files Motion regarding witness access
02/19/1998		Motion (P#32) allowed (Patrick F Brady, Justice)
02/19/1998	33	Deft files Motion for independent fingerprint examination of
02/19/1998	33	fingerprint evidence
02/19/1998		Motion (P#33) allowed (Patrick F Brady, Justice)
02/19/1998	34	Deft files Motion for costs of copies of crime scene photographs in
02/19/1998	34	the possession of the Commonwealth
02/19/1998		Motion (P#34) allowedin the amount of \$200 (Patrick F Brady, Justice)
02/19/1998	35	Deft files Motion for costs of cerified copies Commonwealth witness'
02/19/1998	35	convictions
02/19/1998		Motion (P#35) allowed up to \$200 (Patrick F Brady, Justice)
02/19/1998	36	Deft files Motion for costs fingerprint evidence expert
02/19/1998		Motion (P#36) allowed up to \$500 (Patrick F Brady, Justice)
02/19/1998		Motion (P#32) allowed (Patrick F Brady, Justice)
03/13/1998		Brought into Court. Commonwealth's oral motion to revoke bail, after
03/13/1998		hearing, allowed
03/13/1998		Bail set on 07/31/97 revoked
03/13/1998		Mittimus without bail issued to Nashua St. Jail . Brady, J. - P.
03/13/1998		Weschler, ADA - B. Urquhart, Court Reporter - S. Sack, Atty.
03/16/1998		Defendant not in Court.

03/16/1998	37	Deft files Motion for specific exculpatory evidence, after hearing,
03/16/1998	37	taken under advisement. Brady, J. - P. Weschler, ADA - B. Urquhart,
03/16/1998	37	Court Reporter - S. Sack, Atty.
03/18/1998		Motion (P#37) denied in part, allowed in part. as endorsed. (Patrick
03/18/1998		Brady, Justice)
03/23/1998		Brought into Court
03/23/1998	38	Deft files Motion for examination of jurors
03/23/1998		Motion (P#38) allowed in part,denied in part(Patrick F Brady,
03/23/1998		Justice)
03/23/1998	39	Deft files Request for preliminary instructions
03/23/1998		Motion (P#39) allowed in part, denied in part.
03/23/1998	40	Deft files Motion that the defendant allowed to be provided with
03/23/1998	40	clothes
03/23/1998		Motion (P#40) denied (Patrick F Brady, Justice)
03/23/1998	41	Deft files Motion to exclude any police officers from sitting at
03/23/1998	41	counsel table
03/23/1998	42	Deft files Motion to sequester
03/23/1998		Motion (P#42) allowed (Patrick F Brady, Justice)
03/23/1998	43	Deft files Motion in limine re: Defendant's statements
03/23/1998	44	Deft files Motion in limine to exhibit evidence of subsequent
03/23/1998	44	misconduct
03/23/1998	45	Deft files Motion in limine to exclude evidence of Defendant's prior
03/23/1998	45	convictions
03/23/1998	46	Deft files Motion in limine -- segment of Murder indictment not to be
03/23/1998	46	read to jury
03/23/1998	47	Deft files Motion in limine re: Mugshots
03/23/1998	48	Deft files Motion in limine to prohibit evidence of hearsay
03/23/1998	48	statements that the Defendant was seeking to harm the decedents
03/23/1998		Motion (P#48) allowed (see record) (Patrick F Brady, Justice)
03/23/1998	49	Deft files Motion in limine to prohibit evidence of search of
03/23/1998	49	Cassandra Walker's apartment after the shooting of the decedents and
03/23/1998	49	deferred as endorsed.
03/23/1998	50	Deft files Motion in limine to prohibit testimony by members of the
03/23/1998	50	decedents family
03/23/1998	51	Commonwealth files Statement of case
03/23/1998	52	Commonwealth files Motion in limine regarding demonstrative charts
03/23/1998		Motion (P#52) allowed (Patrick F Brady, Justice)
03/23/1998	53	Commonwealth files Motion in limine as to certain handgun allegedly
03/23/1998	53	us ed during murders of Roosevelt Price and Ronald Price, action
03/23/1998	53	deferred.
03/23/1998	54	Commonwealth files Motion in limine to permit primary investigator to

03/23/1998	54	sit in Courtroom
03/23/1998		Motion (P#54) allowed (Patrick F Brady, Justice)
03/23/1998	55	Commonwealth files Motion in limine re: prior bad acts
03/23/1998		Motion (P#55) allowed (Patrick F Brady, Justice)
03/23/1998	56	Commonwealth files Motion for a view
03/23/1998		Motion (P#56) allowed (Patrick F Brady, Justice)
03/23/1998	57	Commonwealth files Motion to allow witnesses to remain in the
03/23/1998	57	Courtroom
03/23/1998	58	Commonwealth files Motion in limine to admit excited utterance
03/23/1998	59	Commonwealth files Motion in limine regarding photographs of victims
03/23/1998	59	Commonwealth moves for trial of 001--005. Court orders jury of 15
03/23/1998	59	members impanelled. Trial commences with 15 jurors before Brady, J.
03/23/1998	59	D. Pratt, Court Reporter
03/24/1998		Brought into Court. View taken. Trial continues with 15 jurors before
03/24/1998		Brady, J.
03/24/1998	60	Deft files Motion in limine to introduce evidence of statements of
03/24/1998	60	Dallas Price that "Junior Williams would turn against him for Ronnie"
03/24/1998		Motion (P#60) denied (Patrick F Brady, Justice)
03/24/1998	61	Deft files Motion in limine to introduce evidence of statements of
03/24/1998	61	Junior Williams
03/24/1998		Motion (P#61) allowed (Patrick F Brady, Justice) - D. Pratt, Court
03/24/1998		Reporter
03/25/1998		Brought into Court. Juror #7-2 Jay Corcoran excused by Court. Trial
03/25/1998		continues with 14 jurors before Brady, J.
03/25/1998	62	Deft files Motion in limine to prohibit witnesses from mentioning
03/25/1998	62	that there was a prior trial
03/25/1998		Motion (P#62) allowed (Patrick F Brady, Justice)
03/26/1998		Brought into Court. Trial continues with 14 jurors before Brady, J.
03/26/1998		D. Pratt, Court Reporter
03/27/1998		Brought into Court. Trial continues with 14 jurors
03/27/1998	63	At the conclusion of the Commonwealth's case in chief the
03/27/1998	63	Defendant's Motion for required finding of not guilty filed.
03/27/1998		Motion (P#63) denied (Patrick F Brady, Justice)
03/27/1998	64	Request for Jury Instructions filed by Commonwealth
03/27/1998	65	Request for Jury Instructions filed by Defendant. D. Pratt, Court
03/27/1998	65	Reporter
03/27/1998		Paper # 63 renewed and denied at the close of all the evidence
03/31/1998		Brought into Court. Trial continues with 14 jurors before Brady, J.
03/31/1998		At the conclusion of the Court's instructions to the jury the names
03/31/1998		of juror #5-12 Emilia Askew and #8-1 Kenneth Delucia are drawn and
03/31/1998		designated as alternate jurors

03/31/1998		RE offense 1: Guilty verdict
03/31/1998	66	Verdict affirmed. Verdict slip filed.
03/31/1998		RE offense 2: Guilty verdict
03/31/1998	67	Verdict affirmed. Verdict slip filed.
03/31/1998		RE offense 3: Guilty verdict
03/31/1998	68	Verdict affirmed. Verdict slip filed.
03/31/1998		RE offense 4: Guilty verdict
03/31/1998	69	Verdict affirmed. Verdict slip filed.
03/31/1998		RE offense 5: Guilty verdict
03/31/1998		Sentence imposed: as to 001 - MCI Cedar Junction Life - Mittimus issued.
03/31/1998		Sentence imposed: as to 002 - MCI Cedar Junction - Life from and after #001.
03/31/1998		Sentence imposed: as to 004 - MCI Cedar Junction Min. 9 years Max. 10
03/31/1998		years concurrent with #001. Mittimus issued.
03/31/1998		Sentence imposed: as to 005 - MCI Cedar Junction Min. 3 years Max. 5
03/31/1998		years concurrent with #001. Mittimus issued.
03/31/1998		Sentence imposed: as to 003 - Indictment placed on file defendant assenting thereto.
03/31/1998		Sentence credit given as per 279:33A: 33 days
03/31/1998		Notified of right of appeal under Rule 64
03/31/1998		Notified of right of appeal under Rule 65. Brady, J. - P. Weschler, A
03/31/1998		DA - D. Pratt, Court Reporter - S. Sack, Atty.
04/10/1998	71	Deft files notice of appeal.
04/10/1998	72	Withdrawal of appearance filed by Sack.
04/10/1998		Motion (P#72) allowed. Donovan, RAJ - D. McLean, Court Reporter - S.
04/10/1998		Sack, Attorney
04/10/1998		Committee for Public Counsel Services appointed
11/12/1998		Copy of notice of appeal mailed to Brady,J and P. Wechsler, ADA
11/12/1998	73	Letter sent to D.Pratt, Court Reporter for preparation of
11/12/1998	73	transcripts. Certificate of Clerk-filed.
05/21/1999		Transcript received from D.Pratt, Court Reporter.
07/06/1999		Notice sent to attorneys that transcripts are available.
07/19/1999		Certificate of delivery of transcript by Clerk-filed.
07/21/1999		Second notice sent to Attorney D.Hodge for the defendant, Re:
07/21/1999		Transcripts are available.
07/27/1999	75	Certificate of delivery of transcript by Clerk-filed.
07/28/1999		Notice of assembly of record; sent to Clerk of Supreme Judicial Court
07/28/1999		and attorneys for Commonwealth and defendant.
07/28/1999		Two certified copies of docket entries, original and copy of
07/28/1999		transcript, two copies of exhibit list, list of documents, copy of

07/28/1999		indictments and notice of appeal, each transmitted to Clerk of
07/28/1999		Appellate Court. (J.Sullivan, ADA - P.Wechsler, ADA D.Hodge, Attorney
07/28/1999		for the defendant)
01/25/2001	76	Deft files Appellant's motion for copies of photograph trial exhibits.
01/25/2001		Motion (P#76) allowed. Wilson, Mag
01/25/2001	77	Rescript received from SJC; judgment AFFIRMED
07/20/2004	78	Deft files pro se: Motion to waive fees and court costs. (Brady, J
07/20/2004	78	notified w/copy (attached to P#83) and docket sheets)
07/20/2004	79	Deft files pro se: Motion to proceed in forma pauperis and affidavit
07/20/2004	79	in support of (Brady, J notified w/copy (attached to P#83) and docket
07/20/2004	79	sheets)
07/20/2004	80	Defendant's pro se: motion to appoint counsel, filed. (Brady, J
07/20/2004	80	notified w/copy (attached to P#83) and docket sheets)
07/20/2004	81	Defendant's pro se: motion for an evidentiary hearing, filed. (Brady,
07/20/2004	81	J notified w/copy (attached to P#83) and docket sheets)
07/20/2004	82	Defendant's pro se: motion for release from unlawful restraint, for
07/20/2004	82	new trial, for post-trial, discovery and hearings w/affidavit in
07/20/2004	82	support of, filed. (Brady, J notified w/copy (attached to P#83) and
07/20/2004	82	docket sheets)
07/28/2004	83	Commonwealth's notice of appearance and statement of opposition to
07/28/2004	83	the deft's motion for new trial, filed. (Brady, J notified w/copy and
07/28/2004	83	docket sheets)
09/07/2004		Motion (P#78) denied as endorsed. Brady, J. 09/03/04. (J. Ditkoff,
09/07/2004		ADA and deft pro se notified (attached to P#84) with copy of
09/07/2004		endorsement)
09/07/2004		Motion (P#79) denied. (J. Ditkoff, ADA and deft pro se notified
09/07/2004		(attached to P#84) with copy of endorsement)
09/07/2004		Motion (P#80) denied. (J. Ditkoff, ADA and deft pro se notified
09/07/2004		(attached to P#84) with copy of endorsement)
09/07/2004		Motion (P#82) denied (see Memorandum of Decision this date 09/03/04)
09/07/2004		(J. Ditkoff, ADA and deft pro se notified (attached to P#84) with
09/07/2004		copy of endorsement)
09/07/2004		Finding by Court: Memorandum of Decision denying deft's motion for
09/07/2004		release from unlawful restraint, for new trial, and for post trial
09/07/2004		discovery and hearings, Brady, J. (J. Ditkoff, ADA and deft pro se
09/07/2004		notified (attached to P#84) with copy.)

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## Charges

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5 Charges for Docket: SUCR1992-11850

<b>No.</b>	<b>Charge Description:</b>	<b>Indictment:</b>	<b>Status:</b>
1	Murder, 1st degree	SUDA92-11850	Guilty verdict
2	Murder, 1st degree	SUDA92-11850	Guilty verdict
3	Dang weapon, possess gun, no license, on person/in MV	SUDA92-11850	Guilty verdict
4	Assault, dangerous weapon	SUDA92-11850	Guilty verdict
5	Assault & battery, dangerous weapon	SUDA92-11850	Guilty verdict

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